

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TERRY MONSKY, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

vs.

DIRECT DIGITAL HOLDINGS, INC.,
MARK WALKER, KEITH W. SMITH,
DIANA DIAZ, and DIRECT DIGITAL
MANAGEMENT, LLC,

Defendants.

Case No. 4:24-cv-01940
(Consolidated with Case No. 4:24-cv-02567)

Judge Kenneth M. Hoyt

**LEAD PLAINTIFF'S MOTION FOR LEAVE TO FILE A SUR-REPLY TO
DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS**

Lead Plaintiff Donald W. Hutchings (“Plaintiff”) respectfully moves this Court for an order granting him leave to file the sur-reply brief attached hereto as Exhibit A, in response to Defendants’ Reply in Support of Motion to Dismiss Plaintiff’s Consolidated Complaint (ECF 46) (“Reply Brief”).

I. CERTIFICATE OF CONFERRAL

Pursuant to LR7.1(D), Plaintiff’s counsel have conferred with Defendants’ counsel. Plaintiff’s counsel state that Defendants oppose this motion.

II. STATEMENT OF NATURE AND STAGE OF PROCEEDINGS

Plaintiff brings this putative class action under §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 promulgated thereunder. Defendants filed their Reply Brief in support of their motion to dismiss on April 14, 2025.

III. STATEMENT OF THE ISSUES TO BE RULED UPON THE COURT

Should Plaintiff be granted leave to file the attached sur-reply in response to the “new arguments or evidence” in Defendants’ Reply Brief? *Georgia Firefighters’ Pension Fund v. Anadarko Petroleum Corp.*, 99 F.4th 770, 774 (5th Cir. 2024).

IV. ARGUMENT

Although sur-replies are generally “heavily disfavored,” their allowance is subject to the district court’s discretion. *Id.* Nonetheless, when a reply brief includes new arguments or evidence, the court must allow the opposing party to respond or disregard the newly raised points. *Id.*; *Residents of Gordon Plaza, Inc. v. Cantrell*, 25 F.4th 288, 296 (5th Cir. 2022) (“[A] district court abuses its discretion when it considers new arguments raised for the first time in a reply brief without providing the non-movant an adequate opportunity to respond prior to a ruling.”) (internal quotation omitted).

Along with their Reply Brief, Defendants provided a recent opinion from their own lawsuit pending in the United States District Court for the District of Maryland, *Colossus Media, LLC v. Adalytics Research, LLC*, 2025 WL 712986, at *6–*11 (D. Md. Mar. 5, 2025) (ECF 46-3, Appx. E-010-019). Defendants also submitted a ten-page statement from the Media Rating Council, Inc. entitled “MRC IVT Requirements and Processes for Pre-Bid – Comments on the Recent Adalytics Blog.” ECF 46-2, Appx. D-001-011. Defendants’ Reply Brief suggests that these matters cast doubt on the legitimacy of Plaintiff’s claims, asserting among other things that the “[Complaint’s] allegations . . . have only grown more dubious in recent months.” *See* Reply Brief at 1. Plaintiff seeks to respond to the foregoing by explaining why these disputed matters are not properly considered on a motion to dismiss and showing that they are irrelevant to the pleading of Plaintiff’s claims. *See* Exhibit A.

V. CONCLUSION

Accordingly, Plaintiff respectfully requests leave to file the attached sur-reply.

DATED: April 23, 2025

JOHNSON FISTEL, PLLP

/s/ Michael I. Fistel, Jr.

Michael I. Fistel, Jr.
Attorney-In-Charge
 Murray House
 40 Powder Springs Street
 Marietta, GA 30064
 Telephone: (470) 632-6000
 Facsimile: (770) 200-3101
 michael@johnsonfistel.com

JOHNSON FISTEL, PLLP
 Jeffrey A. Berens
 2373 Central Park Boulevard, Suite 100
 Denver, CO 80238-2300
 Telephone: (303) 861-1764
 jeffb@johnsonfistel.com

SPONSEL MILLER PLLC
Thane Tyler Sponsel III (Texas SBN 24056361)
Federal ID No. 690068
520 Post Oak Blvd.
Houston, TX 77027
Telephone: (713) 892-5400
sponsel@smglawgroup.com

Plaintiff's Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on April 23, 2025.

/s/ Michael I. Fistel, Jr.

MICHAEL I. FISTEL, JR.